2017 IL App (3d) 140897-U

Order filed October 4, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0897
v.	)	Circuit No. 13-CF-101
	)	
JOSHUA F. MINER,	)	Honorable Gerald Kinney,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's natural life sentence was constitutional as applied to him.

¶ 2 The defendant, Joshua F. Miner, was convicted of two counts of first degree murder and sentenced to natural life imprisonment. He appeals his sentence, arguing that the statute mandating life imprisonment is unconstitutional as applied to him.

¶ 3 FACTS

¶ 4 On January 10, 2013, the defendant, Adam Landerman, Alisa Massaro, and Bethany McKee were each charged with six counts of first degree murder for the strangulation deaths of Eric Glover and Terrance Rankins. 720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2012). The cases were severed. A bench trial was held on the defendant's case.

¶ 5 At trial, Joliet Police Officers Brian Lanton and Bruce Trevillian testified that on January 10, 2013, at 3:55 p.m., they were dispatched to a two-story house after receiving information that there were two dead bodies inside. The door to the house was unlocked, and Lanton opened the door, announced "Joliet Police" and entered. They saw Massaro at the back of the house. Massaro "indicated that [the defendant] was hiding upstairs and [Landerman] was hiding downstairs." Lanton and Trevillian went up to the second story. Upstairs, the officers found a man lying face down with a plastic bag wrapped around his head. In another room, the officers found another man lying face down with his head wrapped in a plastic bag. The officers also found the defendant upstairs. The defendant told the officers that he had killed one of the men and Landerman had killed the other. The defendant then "stated that he had killed the guy *** because he was trying to rape one of the girls, and that [Landerman] had killed the other guy because he had jumped on [the defendant's] back while he was fighting with the first [guy]." The defendant further told the officers that he had put plastic bags around the men's heads because the girls did not want to see their faces and that a plastic bag was on the floor underneath one of the men because McKee's father was "going to take care of the mess." Lanton and Trevillian did not see Landerman at the house, but Landerman had been arrested by another officer.

¶ 6 Officers Michael DeVito and Terry Higgins also testified that they worked for the City of Joliet and received a call to respond to the house. DeVito saw the two dead bodies and heard the defendant admit to killing one of the men. DeVito and Higgins searched the basement and

noticed a doorway without a door. They entered that area and saw some paneling propped against the wall and noticed shoes sticking out of the paneling. They then apprehended Landerman hiding behind the paneling.

¶ 7 Patrick Schumacher testified that he was a detective with the Joliet police department. Schumacher was dispatched to the house and escorted the defendant out of the house. The defendant "stated words to the affect that they, apparently meaning the victims in this case, had attempted to rape one of the girls, and that he had done one of them and that [Landerman] had done the other one and in the process saved his life. And another statement to the affect of it was either us or them." Schumacher took the defendant to the police station and into an interview room to take a statement. Schumacher conducted a videotaped interview of the defendant. The videotape was played in open court. Schumacher said the videotape accurately portrayed the interview.

¶ 8 At the beginning of the interview, the defendant said that he had started fighting Rankins because Rankins was trying to rape McKee. However, at the end of the interview, the defendant changed his story. The defendant said he, McKee, Massaro, and Landerman were hanging out upstairs at Massaro's father's house. McKee's baby was also there. Rankins kept calling McKee. McKee told the group they should invite Rankins and Glover over. McKee said they had money and liquor and recommended robbing them. The defendant said they did not discuss killing Rankins and Glover, but determined that they would beat them up if they had to. Right before Rankins and Glover arrived, Landerman asked the defendant what they were going to do. The defendant told Landerman to give him a signal and pick one of the men.

¶ 9 Once Rankins and Glover arrived, they all hung out and drank for a while. Landerman gave the defendant a signal. McKee and Massaro took the baby downstairs. The defendant left

the room pretending to go get a drink. He then came back and told Rankins and Glover to empty their pockets. Rankins stood up and faced the defendant. They started fighting, and the defendant put Rankins into a chokehold. Glover then got up and kicked the defendant in the face. Landerman started fighting Glover. The defendant continued to choke Rankins, waiting for him to pass out. Once he passed out, the defendant went to check on Landerman to see if he needed help with Glover. Landerman had choked Glover until he passed out. The defendant kicked Rankins. Once he realized they were dead, they moved Rankins and Glover into one of the bedrooms. Massaro and McKee then came back upstairs. The defendant and Landerman told the girls what had happened. Massaro and McKee did not believe that Rankins and Glover were dead so the defendant punched both of them in the head to show them. Landerman then jumped on both of the bodies. McKee said she wanted to hit the bodies. She hit them with a liquor bottle and kicked them. Then Massaro hit them with the liquor bottle.

¶ 10 They left the bodies in the bedroom and went into the living room and smoked some marijuana. They decided they needed some cigarettes so they checked the pockets of Rankins and Glover. Landerman and the defendant found approximately $100 in their pockets along with six small bags of marijuana and some cocaine. They gave the money to Massaro and McKee to get some cigarettes and gas. Massaro and McKee were concerned that Rankins and Glover would turn into zombies. The defendant tied Rankins and Glover together. He also put plastic bags over their heads so that McKee and Massaro would not have to look at their faces. The defendant and Massaro talked about having sexual intercourse on the bodies. After Landerman agreed, they covered the bodies with blankets and pillows, and the three of them attempted to have sexual intercourse, but could not orgasm.

¶ 11 The four of them sat down in the living room to decide what to do. They decided to say that Rankins raped McKee if asked by the police what happened. Landerman burned Rankins's and Glover's cell phones. The defendant called someone he knew called "Chicago" to get rid of the men's vehicle. McKee called her father to ask him what to do. McKee's father told them to get some tools and mentioned selling the body parts. Landerman and the defendant parked the vehicle away from the house. They all then went to their respective houses for some rest. The defendant told Massaro to hold McKee's cell phone in case they needed her. After they rested, Massaro and McKee picked up the defendant and Landerman. Landerman had brought bleach, garbage bags, and tools from his house. Landerman and the defendant put one of the bodies on top of a garbage bag because they thought McKee's father was going to dismember the body. The defendant said at that point the police showed up.

¶ 12 Christopher Botzum testified that he was employed by the Joliet police department and was trained in computer, video, audio, and cell phone forensics. He performed forensics of the defendant's phone. The defendant had contacts for "AdDum," "Beathanee," and "Chicago." "Beathanee's" phone number was registered to Theresa McKee. The defendant's phone history showed that in the early morning of January 10, he had a text message conversation with "Chicago" about getting rid of the vehicle. His phone history also showed that he had a text message conversation with Massaro on McKee's cell phone about cleaning up and keeping Rankins's and Glover's personal effects separate. A text message from the defendant's phone to "AdDum" at 12:22 p.m. stated, "What up u got the keys stel and dont for git the stuff bro tex beatanee we got to git picked up."

¶ 13 Jamie Edwards testified that she worked for the Illinois State Police forensic sciences command at the Forensic Science Center in Chicago. Before that she worked at the Joliet lab in

the latent fingerprint section. She was tendered as an expert in latent fingerprint examinations. Fingerprints on the garbage bags matched the defendant's fingerprints. She also identified Massaro's and Landerman's fingerprints on the garbage bag. There was also a propane tank taken from the scene that had the defendant's and Landerman's fingerprints on it.

¶ 14 Kelly Krajnik testified that she was a forensic scientist with the Illinois State Police. She was tendered as an expert. She tested blood that was on the defendant's shirt against Rankins's blood and found it to be a match. Rankins's blood was also found on Massaro's pants and shoe.

¶ 15 Dr. Valerie Arangelovich testified that she was a forensic pathologist. She was tendered as an expert. She conducted the autopsies of Rankins and Glover. She noticed that Rankins and Glover had been dead and lying there for a while, though she could not pinpoint the time of death. There were no defensive injuries on Rankins's or Glover's hands. Arangelovich removed the plastic bags from the decedents' heads and noted that "[t]here was an abundant amount of bloody fluid collected in the bag." There were multiple lacerations and bruising to Rankins's and Glover's head, face, and body from blunt force trauma. She could not tell if they were inflicted before or after death, but determined that they were not contributory to their death. Arangelovich determined that Rankins's and Glover's deaths were caused by strangulation. Arangelovich said that it takes approximately 10 to 30 seconds for a person to lose consciousness when being strangled. After the victim loses consciousness, it takes an additional 3½ to 6 minutes of applied pressure to kill the victim.

¶ 16 The court found the defendant guilty of all counts. In sentencing the defendant, the court stated:

> "It is really difficult to comprehend the senseless nature of this crime. It's impossible for me to comprehend it. The gain that was to come from this was so

minimal, to take a life, two lives, for some pocket change, some cigarettes and some drugs. It just is—the only word that can come to me is totally senseless.

There was a time where you'd be facing the death penalty, and for most of my years here I was responsible to ensure that those trials were conducted in a fair and open manner. But the legislature has seen fit to remove that penalty, and the maximum penalty for this offense is life in prison. That's what you're sentenced to. You're sentenced to spend your life in prison.

It's impossible for me to know how the families of the victims are feeling, and I know that this has probably created significant issues in your family, as well. But that we can't change. The only thing we can do is impose the punishment that is appropriate, and that will be a sentence of life in prison."

The defendant filed a motion to reconsider, arguing that his sentence was unconstitutional. The motion was denied.

¶ 17 ANALYSIS

¶ 18 On appeal, the defendant argues that his sentence of life imprisonment is unconstitutional as applied to him. Specifically, the defendant argues that his sentence amounts to cruel and unusual punishment and violates the proportionate penalties clause because the court was unable to take into account the defendant's mental health problems, addiction, or history of sexual abuse.

¶ 19 The eighth amendment to the United States Constitution (U.S. Const., amend. VIII) prohibits cruel and unusual punishments, which includes punishments that are "disproportionate to the crime." *Graham v. Florida*, 560 U.S. 48, 59 (2010). The proportionate penalties clause of the Illinois Constitution states that "[a]ll penalties shall be determined both according to the

seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "A statute may be deemed unconstitutionally disproportionate if *** the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community ***." *People v. Miller*, 202 Ill. 2d 328, 338 (2002). It is the challenging party's burden to establish the constitutional invalidity of a statute. *Id.* at 335. "An as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *People v. Thompson*, 2015 IL 118151, ¶ 36. We review *de novo* a challenge to the constitutionality of a statute. *Miller*, 202 Ill. 2d at 335.

¶ 20 Under section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections (Code), "the court shall sentence the defendant to a term of natural life imprisonment if the defendant, at the time of the commission of the murder, had attained the age of 18, and *** is found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2016). Illinois courts have upheld application of the statute to adult and juvenile principals and adult accomplices. See *Miller*, 202 Ill. 2d at 337. However, our supreme court in *Miller* has held that "the statute is vulnerable to a properly supported, as-applied constitutional challenge by a juvenile." *People v. McKee*, 2017 IL App (3d) 140881, ¶ 23 (citing *Miller*, 202 Ill. 2d at 341). The defendant, here, relies on *Miller* for the proposition that his life sentence should be found unconstitutional based on his young age (24 years) when committing the offense and his history of mental illness, addiction, and sexual abuse.

¶ 21 In *Miller*, the defendant was 15 years old. *Miller*, 202 Ill. 2d at 331. He was standing outside on a corner of his neighborhood when he was approached by two men a little older than he was. *Id.* at 330. The men asked him to stand as a lookout. The defendant saw that they both

had guns and agreed to stand as the lookout. *Id.* at 330-31. The two men fired shots at two other people, who both died. *Id.* at 331. As soon as the defendant heard gunshots, he ran to his girlfriend's house. *Id.* The defendant was convicted of the murders. However, the court found section 5-8-1(a)(1)(c)(ii) of the Code unconstitutional as applied to the defendant and sentenced him to 50 years' imprisonment. *Id.* at 332. In doing so, the court noted that the defendant was "a 15-year-old child who was passively acting as a look-out for other people, never picked up a gun, never had much more than—perhaps less than a minute—to contemplate what this entire incident is about." *Id.* The supreme court agreed with the circuit court's assessment and found the statute unconstitutional as applied to the defendant. *Id.* at 341.

¶ 22 The First District of our appellate court has applied *Miller* to 18 and 19-year-old defendants in *People v. House*, 2015 IL App (1st) 110580, and *People v. Harris*, 2016 IL App (1st) 141744. In *House*, the 19-year-old defendant was present and armed when the victims were forced into a vehicle at gunpoint, and he admitted to acting as the lookout. *House*, 2015 IL App (1st) 110580, ¶¶ 83-84. In finding the sentencing statute unconstitutional as applied to the defendant, the court noted that the defendant (1) was young, (2) was not present at the scene of the murder, (3) solely acted as a lookout, and (4) did not help in planning the crime. *Id.* ¶ 89. Moreover, the court noted that the defendant did not have a history of violent crimes, never knew his father, was raised by his grandmother, and did not graduate from high school. *Id.* ¶ 101. Therefore, the court determined, "Given defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, we find that defendant's mandatory sentence of natural life shocks the moral sense of the community." *Id.*

¶ 23 The 18-year-old defendant in *Harris* shot two individuals, one of which died. *Harris*, 2016 IL App (1st) 141744, ¶¶ 5-6, 14. He was convicted of first degree murder and attempted first degree murder and was sentenced to 76 years' imprisonment. *Id.* ¶ 1. The court emphasized that the defendant was young and had no criminal record at all. The court further mentioned that the defendant had "additional attributes arguing for his rehabilitative potential." *Id.* ¶ 64. The court noted that the defendant had grown up in a stable environment, was continually supported by his family, was finishing high school at the time of the murders, and completed his general education diploma while in pretrial custody. *Id.* The court, therefore, held that "we believe that it shocks the moral sense of the community to send this young adult to prison for the remainder of his life, with no chance to rehabilitate himself into a useful member of society." *Id.* ¶ 69.

¶ 24 The First District in both *House* and *Harris* relied on "[r]esearch in neurobiology and developmental psychology that the brain doesn't finish developing until the mid-20s, far later than was previously thought. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings." (Internal quotation marks omitted.) *Id.* ¶ 67 (quoting *House*, 2015 IL App (1st) 110580, ¶ 95, quoting Vincent Schiraldi & Bruce Western, *Why 21 year-old offenders should be tried in family court*, Wash. Post (Oct. 2, 2015), www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5-9ef3-fde182507eac_story.html).

¶ 25 The defendant cites to *Miller*, *House*, and *Harris*, and argues that the reasoning in these cases should be applied here. Specifically, the defendant argues that his life sentence should be found to be unconstitutional as applied to him since he was only 24 years old, was only the

principal in one of the murders, had a history of mental health and addiction issues, and had a difficult upbringing. We disagree.

¶ 26 The defendant's case is readily distinguishable from *Miller* and *House*. The defendant in *Miller* was a 15-year-old who had approximately one minute to decide whether to act as a lookout for two older men with guns. *Miller*, 202 Ill. 2d at 331. He never touched a weapon and fled as soon as he heard gunshots. *Id.* The defendant in *House* was 19 years old and, though he was armed, only acted as a lookout, was not present at the scene of the murder, and did not help in planning the crime. *House*, 2015 IL App (1st) 110580, ¶¶ 83-84, 89. The defendant, here, was far more culpable than the defendants in *Miller* and *House*. He was 24 years old, 9 years older than the defendant in *Miller* and 5 years older than the defendant in *House*, constructed a plan to rob and beat Rankins and Glover, and actually committed the murder of Rankins. Then after the murders, he hit and kicked the bodies, robbed them, put plastic bags over their heads, tied them together, and had sexual intercourse on their bodies.

¶ 27 Though the defendant in *Harris* did actually commit the shooting, we still find the defendant's case distinguishable. The defendant in *Harris* was 18 years' old and committed a drive by shooting. *Harris*, 2016 IL App (1st) 141744, ¶¶ 5-6, 14. Further, he had no criminal record, and the court believed that, with his background, he had strong rehabilitative potential. *Id.* ¶ 64. Here, the defendant's actions surrounding the murders were particularly heinous. Not only did he lure to the house, rob, and murder Rankins and Glover, he also mistreated their bodies postmortem. The attempt to cover up the murders was carefully calculated and shows that this was not some youthful indiscretion of an immature brain. The defendant planned how to get rid of the vehicle and phones of the deceased, how to clean up the crime scene, and what explanation should be given to the police. Given the particularly gruesome nature of the crime,

the defendant's life sentence would not shock the moral sense of the community. Moreover, unlike the defendant in *Harris*, the defendant here had prior felony convictions for criminal damage to property, possession of a stolen motor vehicle, and residential burglary, thus lessening his rehabilitative potential.

¶ 28 In coming to this conclusion, we find our decision in *McKee* particularly applicable. *McKee*, 2017 IL App (3d) 140881. The defendant's coperpetrator, Bethany McKee, argued that since she was only 18 years old at the time of the murders and did not actually commit the murders herself, the court should apply *Harris* and find her sentence unconstitutional as applied. *Id.* ¶ 30. Our court noted that the First District in *People v. Thomas*, 2017 IL App (1st) 142557, declined to follow *Harris* stating that *Harris* misinterpreted the law as set forth in *Thompson*, 2015 IL 118151. *McKee*, 2017 IL App (3d) 140881, ¶ 33. The *McKee* court stated:

> "In this regard, we find the following commentary in *Thompson*—on the nature of the defendant's as-applied challenge to the extent that it sought support in scientific research on juvenile development—to be particularly relevant:
>
> > 'To support his as-applied challenge, defendant relies exclusively on the "evolving science" on juvenile maturity and brain development that formed the basis of the *Miller* decision to ban mandatory natural life sentences for minors. Defendant maintains that this science applies with "equal force" to a criminal defendant who was between the ages of 18 and 21 when the underlying crime was committed. The record, here, however, contains nothing about how that science applies to the circumstances of defendant's case, the key showing for an as-applied constitutional challenge. Nor does the record contain any factual development on the

> issue of whether the rationale of *Miller* should be extended beyond minors under the age of 18. Undoubtedly, the trial court is the most appropriate tribunal for the type of factual development necessary to adequately address defendant's as-applied challenge in this case.' *Thompson*, 2015 IL 118151, ¶ 38.
>
> Here, McKee offered no evidence in the circuit court on the science of juvenile development or how it applied to her. Accordingly, *Harris* is of no avail to McKee, and we reject her request to follow it." *Id.* ¶ 34.

Our court recognized that McKee had a history of mental health issues and traumatizing experiences. *Id.* ¶ 35. The court stated, "The legislature has, however, evidenced its intent to bar consideration of those factors by withholding all discretion from the courts to impose any sentence more lenient than natural life upon conviction of more than one first degree murder." *Id.* ¶ 36. Therefore, the court found:

> "Where, as here, the wrongdoer is legally an adult, played a critical role in developing the criminal plan, and was actively complicit in the execution of the robbery that resulted in the deaths of two men, we do not see that McKee has met her burden of establishing that her natural life sentence would shock the moral conscience of the community and was, therefore, unconstitutional as applied. Nor, given the facts of this case, do we see ourselves as authorized to reduce on appeal a sentence the circuit court was statutorily compelled to impose." *Id.*

¶ 29 Similarly, the defendant did not offer any evidence in the circuit court on the science of juvenile development or its applicability to the facts of his case. Therefore, *Harris* is not only factually distinguishable, its reasoning is also inapplicable to the defendant's case.

¶ 30 Because we find the circumstances of the offense are particularly heinous, we do not believe that life imprisonment is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community, and we find that the defendant's sentence is constitutional.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Will County is affirmed.

¶ 33 Affirmed.